

# State of Missouri

## Office of Secretary of State

Case No. AP-06-15

IN THE MATTER OF:

JAMES NORRIS HOLLAND, JR.  
d/b/a SOLOMON JAMES FINANCIAL

Respondent.

### **CONSENT ORDER**

#### **SUMMARY OF ALLEGATIONS**

1. The Missouri Securities Division has alleged that Respondent sold investments in variable annuities and sold securities in Solomon James, Inc., in the State of Missouri and that these constitute grounds to discipline Respondent's registration under § 409.4-412(d) and are in violation of § 409.5-501(2), RSMo. (Cum. Supp. 2005).
2. Respondent and the Securities Division desire to settle the allegations and the matters raised by the Securities Division relating to Respondent's alleged activities.

#### **CONSENT TO JURISDICTION**

3. Respondent and the Securities Division stipulate and agree that the Commissioner has jurisdiction over this Respondent and these matters pursuant to the Missouri Securities Act, Chapter 409, et seq.
4. Respondent and the Securities Division stipulate and agree that the Commissioner has authority to enter this Consent Order pursuant to § 409.6-604(h), RSMo. (Cum. Supp. 2005), which provides:

The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.

#### **WAIVER AND EXCEPTION**

5. Respondent waives his right to a hearing with respect to this matter.
6. Respondent waives any rights that he may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondent specifically forever releases and holds harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner of Securities and their respective representatives and agents from any and all liability and claims arising out of, pertaining to or relating to this matter.

#### **AGREEMENT TO COOPERATE**

7. Respondent agrees to cooperate with the Division's investigation in this matter and will provide information and discovery relating to the subject matter of this investigation.

### **CONSENT TO COMMISSIONER'S ORDER**

8. Respondent and the Securities Division stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
9. Respondent denies some of the Securities Divisions allegations and neither admits nor denies the other allegations made by the Securities Division but consents to the Commissioner's Findings of Fact and Conclusions of Law as set forth below solely for the purposes of this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.
10. Respondent agrees not to take any action or to make or permit to be made any public statement creating the impression that this Order is without a factual basis.
11. Respondent agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith settlement.

### **COMMISSIONER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

12. James Norris Holland, Jr. ("Holland"), with a residential address at 115 Pinecone, Lawrence, Kansas 66046, was a registered agent of Missouri-registered broker-dealer Berthel, Fisher & Company Financial Services, Inc. ("Berthel"), from January 3, 1994 to August 30, 2005. Holland did business as Solomon James Financial and had an office located at 715 Indiana Street, Baldwin City, Kansas 66006.
13. Holland has been a registered agent in Missouri since June 30, 1993. Holland is registered with the Central Registration Depository System ("CRD") with the number 2150318.
14. Berthel has a main office address of 701 Tama Street, Building B, Marion, Iowa 52302. Berthel has been a registered broker-dealer in Missouri since April 30, 1985 and is a member of the National Association of Securities Dealers ("NASD"). Berthel is registered with the CRD with the number 13609.
15. As used in this document, "Respondent" refers to Holland.
16. Holland acquired several customers who were employees of Hallmark Cards, Inc., of Kansas City ("Hallmark").

### ***RESIDENT 1***

17. In October 1998 a Missouri resident and retired Hallmark employee who is currently 70 years old ("MR1"), invested \$690,000 with Holland. Holland originally invested MR1's money into mutual funds. Of this amount, a large portion was invested into Putnam B Share mutual funds, which featured a seven-year surrender charge period.

MR1 to miss four breakpoints which would have resulted in lower fees for MR1.

18. In October 2002, Holland switched approximately \$315,000 of MR1's mutual funds to an Allianz Valuemark IV Variable Annuity with a seven-year surrender charge period.
19. In May 2003, Holland switched approximately \$80,000 of MR1's mutual funds to an Allianz High Five Variable Annuity with a seven-year surrender charge period.
20. In March 2004, Holland switched MR1's Allianz Valuemark IV Variable Annuity to an ING Variable Annuity with a nine-year surrender charge period.
21. In April 2004, Holland switched MR1's Allianz High Five Variable Annuity to an ING Variable Annuity with a nine-year surrender charge period.
22. In February 2005, Holland recommended that MR1 withdraw approximately \$150,000 from the ING Variable Annuity purchased in April 2004 to purchase an Amerus Life Indexed Annuity, and MR1 accepted this recommendation. The Amerus equity indexed annuity has a surrender charge period of fourteen years.
23. Holland generated commissions from MR1's account.
24. MR1 paid surrender charges for the switches described above.

### ***MISSOURI RESIDENT 2***

25. In September 2000, a Missouri resident and Hallmark employee ("MR2") became a client of Holland. MR2 invested over \$450,000 with Holland. At Holland's recommendation, MR2 invested over \$302,000 into Putnam B Share Mutual Funds, which featured a seven-year surrender charge period. The manner in which Holland structured the investment caused MR1 to miss four breakpoints which would have resulted in lower fees for MR2.
26. In October 2002, Holland switched MR2 from the Putnam B Share Mutual Funds to an Allianz Variable Annuity which featured a seven-year surrender charge period.
27. In February 2004, Holland again switched MR2 from the Allianz Variable Annuity to an ING variable annuity which featured a nine-year surrender charge period.
28. Holland generated commissions from MR2's account.
29. MR2 paid surrender charges for the switches described above.

### ***MISSOURI RESIDENT 3***

30. A 69 year-old retired Missouri resident ("MR3") was introduced to Holland by a friend who worked at Hallmark. Holland recommended that MR3 purchase a variable annuity for \$70,000 from funds in MR3's 401(k) plan, and:
  - a. MR3 stated that she doesn't remember having a choice of how to invest and stated "basically the decisions were left up to Holland;"

- b. MR3 stated that she has no knowledge of investing and that she is “not good with that kind of stuff.” MR3 stated, “I basically have to trust the person I’m working with to do the right thing;” and
  - c. MR3 stated that MR3 did not understand riders or annuitization.
31. MR3 does not know if MR3 is receiving monthly periodic payments or annuitization payments.

### ***MISSOURI RESIDENT 5***

32. In 2000, a Missouri resident (“MR5”), a 56 year-old retired employee from Hallmark, was contacted by Holland. Holland, through Berthel, originally recommended that MR5 invest in mutual funds and a real estate investment trust. MR5 stated that MR5 relied on Holland’s advice regarding investment choices.
33. In 2003, Holland called MR5 and wanted to meet with MR5 to discuss a variable annuity in ING. This variable annuity in ING was the only product that was discussed. MR5 stated that based on Holland’s recommendation, MR5 purchased a variable annuity for \$450,000 for the purpose of protecting MR5’s investment assets.
34. MR5 stated that he is fairly unsophisticated and not very market-savvy, but feels he probably has some knowledge. MR5 stated he understood a little about surrender fees, early withdrawal penalties and charges, but was not sure about annuitization or riders or whether those were discussed. MR5 stated that the variable annuity represents most of MR5’s retirement funds.

### ***MISSOURI RESIDENT 7***

35. In July 2004, a Missouri resident (“MR7”), a retired worker from Hallmark who was a 62 year-old widower, contacted Holland and Berthel regarding his pension fund of over \$600,000. MR7 stated that Holland met with MR7 and advised MR7 to transfer MR7’s pension plan to Holland.
36. Holland, among other things:
- a. Invested \$544,847.78 of MR7’s 401(k) into a Jackson National Life (“JNL”) Perspective II Variable Annuity.
  - b. Sold MR7 a guaranteed minimum income benefit rider (“GMIB”) in the JNL Perspective II Variable Annuity which cost MR7 0.6% more per year in fees.
  - c. Invested MR7’s funds from the JNL Perspective II Variable Annuity in the following sub-accounts: 50% in a 1-year guaranteed fixed account, 40% in international funds and 10% in bonds.
37. Holland received a check made out to Jackson National Life for \$93,460.39 from MR7’s profit-sharing plan approximately two weeks after investing MR7’s first check as described above. In a written statement to the Division, Holland stated, among other things, that:

- a. Holland placed the check from MR7's profit sharing plan for \$93,460.39 into a file in Holland's office for approximately four months;
  - b. Holland did not want to put this money into the market as he felt the market was overvalued;
  - c. He did not anticipate the rally that the market had in the fourth quarter of 2004;
  - d. He made a mistake in holding the check; and
  - e. He did not know that holding the check violated any compliance procedures at his firm.
38. In an interview with MR7 on March 10 and June 6, 2005, MR7 told an investigator with the Division, among other things, that:
- a. MR7 had never invested in anything other than his company's retirement program before MR7's investment with Holland;
  - b. The money invested with Holland consisted of over 75% of MR7's net-worth and 100% of MR7's liquid net-worth;
  - c. Holland did not explain the fee structure of the JNL Perspective II Variable Annuity;
  - d. MR7 had no idea what a GMIB rider was;
  - e. MR7 did not know what annuitization meant;
  - f. When annuitization was explained to MR7, MR7 stated that he would not annuitize the policy;
  - g. MR7 did not understand where Holland was going to place the funds, and Holland simply stated that Holland would take care of MR7;
  - h. It was Holland's decision not to invest the check for \$93,000; and
  - i. Holland told MR7 that it would be a better time to invest this money after the first of the year.

### ***RESPONDENT HOLLAND***

39. In March 2006, Holland spoke to an investigator with the Division and stated that at Berthel's annual conference, variable annuity wholesalers presented their products and "sold their stuff" and that these wholesalers "talked about the good, not the bad aspects of their products." Holland stated that he did not remember that Berthel provided any training about how to compare different variable annuities or how to compare variable annuities with mutual funds. Holland stated:
- a. that Berthel did not provide information or training about "who to sell or not to sell variable annuities to;"

- b. that Berthel did not provide information or training about a customer's need for liquidity in the sale of variable annuities; and
  - c. that Holland met with variable annuity wholesalers in Holland's office.
40. An investigation by the Securities Division revealed that:
- a. Berthel approved Holland's sales of variable annuities sometimes as long as eight months after the sale took place; and
  - b. Holland generated commissions from the sale of variable annuities in excess of \$90,000 in 2002. In 2004, Holland generated over \$150,000 in commissions from the sale of variable annuities to eight Missouri customers.
41. Holland stated that he spoke with Dwight Wheelan and Fred Fisher and the head of the insurance division at Berthel prior to implementing Holland's annuity strategies.

### **SELLING SECURITIES IN SJS**

42. In or about 2001, Holland formed Solomon James Sports, Inc. ("SJS"). This company was formed, according to Holland, "to handle the representation of professional sports athletes."
43. During annual reviews of Holland's office, a Berthel examiner noted that Holland was operating SJS.
44. In March 2001, Holland contacted MR2 about investing in SJS. Holland provided information to MR2 about SJS. This information included, among other things, the following:
- a. A twelve-page executive summary (the "Executive Summary") that contained information about the company, its history, the management, advisory board, consultants, objectives growth, financial information, and investment valuation;
  - b. Four pages of promotional material about SJS that included, among other things, the following:
    - i. An SJS Mission Statement;
    - ii. Testimonials from Berthel customers and others relating to Holland's character and integrity;
    - iii. A financial services document that stated among other things, that financial services were to be provided by Berthel;
    - iv. The investment valuation in the Executive Summary stated, among other things, that:
      - A. Solomon James Inc. expects to be operating at a profit within 24 months of the offering date; and
      - B. Solomon James Inc. expects to double its earnings each year

starting at year three. Earnings expectations are \$60,000 year three, \$120,000 year four, and \$240,000 year five.

45. In the summer of 2001, MR2 invested \$30,000 in SJS through Holland. Holland set up an IRA for MR2 at a bank to act as custodian for the MR2's investment in SJS. The statements from the bank list Holland as the registered representative and Berthel as the broker-dealer on the IRA. In September 2001, MR2 invested another \$10,000 in SJS with Holland.
46. In or about 2001, Holland contacted MR5 to invest in SJS. MR5 was provided documents similar to the documents received by MR2. MR5 invested \$40,000 with Holland in SJS. Holland opened a custodial IRA account at a bank for MR5's investment in SJS. The statements from the bank list Holland as the registered representative and Berthel as the broker-dealer on the IRA.
47. In March 2006, Holland spoke to an investigator with the Division and stated that he had sold investments in SJS to approximately nine investors. All of the investors in SJS were customers of Berthel.
48. Holland stated that he had discussed SJS with the officers of Berthel and that he listed this company on Holland's outside business activities. Holland thought that he discussed selling securities in SJS with Berthel officers as well.
49. A review of the records with the Division revealed that the securities in SJS were not registered to be sold in the State of Missouri.
50. Although Holland provided information to investors that the investment was high risk and investor could lose all their money, Holland omitted to disclose the following material information to investors in SJS:
  - a. Specific risks factors associated with an investment in SJS; and
  - b. The method or manner which SJS would employ to "double profits starting in year three.
51. A review of Holland's CRD record reveals that Holland disclosed on the CRD that he was employed as the CEO of SJS during the time he was registered with Berthel.
52. The Commissioner has jurisdiction over these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, *et seq.*
53. The Commissioner has authority to enter this Consent Order pursuant to § 409.6-604(h), RSMo. (Cum. Supp. 2005), which provides that the Commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.
54. This Order is in the public interest.

## ORDER

**WHEREAS**, the Commissioner, after consideration of the stipulations set forth above and on the consent of Respondent and the Securities Division, finds the following Order to be in

the public interest, necessary for the protection of public investors and consistent with the provisions of Chapter 409, RSMo 2000.

**NOW, THEREFORE,** it is hereby Ordered that:

1. Respondent's registration is hereby Censured;
2. [INTENTIONALLY OMITTED]
3. For a period of one (1) year from the entry of this Order, Respondent is prohibited from acting as an agent or investment adviser representative in Missouri, unless his employing firm provides heightened supervision of Respondent's activities as demonstrated by a written policy or procedure not unacceptable to the Securities Division, and which shall include a weekly review of Respondent's new accounts and correspondence by a registered principal to ensure that all correspondence and documents provided to investors have been approved and that transactions and recommendations are authorized, suitable and comply with the supervisory and compliance policies and procedures set forth by his employing firm;
4. For a period of three (3) years from the entry of this Order, Respondent is prohibited from serving as a supervisor for or of any broker-dealer agent or investment adviser representative in Missouri;
5. For a period of two (2) years from the entry of this Order, Respondent is prohibited from offering to sell or selling variable annuities and/or equity indexed annuities;
6. For a period of ten (10) years, prior to the offer or sale of any securities in Missouri (a) in which Respondent has a equity interest, or (b) issued by a company for which Respondent serves as an officer or director, Respondent shall provide the Securities Division with written notice of intent to offer and sell such securities, and a copy of the related offering document(s), regardless of applicable exemption, by sending notice to the following address and with the following caption:

Missouri Securities Division  
600 W. Main Street  
PO Box 1276  
Jefferson City, Missouri 65102-1276  
Attention: Commissioner of Securities and Chief Counsel  
Regarding: Notice of Intent to Offer and Sell Securities by James  
Holland  
Pursuant to Consent Order issued in AP-06-15;

7. Respondent is ordered to pay a civil penalty in the amount of five thousand dollars (\$5,000). This penalty will be suspended provided that Holland complies with the terms of this order;
8. Respondent is ordered to pay four thousand dollars (\$4,000) as the cost of this investigation. This amount shall be suspended provided that Holland complies with the terms of this order;
9. Respondent will pay his own costs and attorneys fees with respect to this matter;
10. The suspended payments in paragraphs 7 and 8 immediately above shall become

immediately payable, under operation of law, upon Respondent's failure to comply, and such immediately due payments shall be in addition to all other penalties than available under the law; and

11. Within five (5) days of issuance of this Order by the Commissioner, the Commissioner shall dismiss, with prejudice, his matter before the Administrative Hearing Commission, Commissioner of Securities v. James Norris Holland d/b/a Solomon James Financial, No. 06-1302 SE.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,  
MISSOURI THIS 14<sup>TH</sup> DAY OF DECEMBER, 2006

ROBIN CARNAHAN  
SECRETARY OF STATE

(Signed/Sealed)  
MATTHEW KITZI  
COMMISSIONER OF SECURITIES

Consented to by:

Mary S. Hosmer  
Assistant Commissioner of Securities  
Missouri Securities Division

James Norris Holland, Jr.